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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,373	06/20/2001	Alberto D. Bernstein	M-11680 US	4200
36257	7590	12/16/2004	EXAMINER	
PARSONS HSUE & DE RUNTZ LLP 655 MONTGOMERY STREET SUITE 1800 SAN FRANCISCO, CA 94111			MARCELO, MELVIN C	
			ART UNIT	PAPER NUMBER
			2662	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/885,373

Applicant(s)

BERSTEIN ET AL.

Examiner

Melvin Marcelo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-21 and 77-80 is/are allowed.
- 6) ☒ Claim(s) 22,23,27,28,49-54 and 74-76 is/are rejected.
- 7) ☒ Claim(s) 29-48 and 55-73 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.121(d)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Original Figure 1, filed 6-20-2001, was labeled as prior art. However, newly submitted Figure 1, filed 2-13-2002, was not labeled as such. Applicant should clarify whether the omission was unintentional or whether Figure 1 should no longer be considered as prior art.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 51 and 75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 51 lacks a proper antecedent basis to claim 28 with regards to "said memory." See claim 50, line 1, "a memory."

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Claim 75 lacks a proper antecedent basis to claim 54 with regards to "said memory." See claim 74, line 1, "a memory."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 22 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Keane et al. (US 2002/0193999 A1).

Keane teaches the method for measuring voice quality of a communication network, wherein VoIP (paragraphs 0002-0003) is VOPN. With respect to the claims below, references to the prior art appear in parenthesis.

22. *A method for measuring voice quality of a communication network (Keane, Figures 1 and 2), comprising:*

causing a first VOPN device to communicate with a second VOPN device through the network (Node A communicates with Node B);

transmitting data packets from the first VOPN device to the second VOPN device through the network, said packets containing a voice test signal (Paragraphs 0071-0074);

*receiving the transmitted packets through the network (Paragraph 0075); and
processing the voice test signal in the transmitted packets received and a
reference voice test signal to measure quality of the network (Paragraph 0075).*

*23. The method of claim 22, wherein the receiving and processing are associated
with the second device (Node B, paragraph 0075).*

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keane et al.

Keane does not teach that the network management system initiates the voice quality measurement. However, Keane does teach that the network management system receives the result of the measurement (paragraph 0075). A skilled artisan would have been motivated to provide the network management system the capability to initiate the voice quality measurement since an operator viewing the results of Keane's measurement at the network management system may want to determine the measurements throughout the entire network. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the capability to initiate the voice quality measurement at the network management system

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in order to determine the overall performance of the network. With respect to the claims below, references to the prior art appear in parenthesis.

27. The method of claim 22, wherein said causing is initiated by a network management system (Obvious in order to determine the overall performance of the network at the network management system of Keane).

8. Claims 28, 49-54 and 74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodman (US 2002/0167937 A1).

Goodman teaches the VOPN device (VoIP Gateway, 16a and 16b in Figure 1) with the voice quality module (Voice Quality Test Probe, 14a and 14b). Goodman does not teach the VOPN device (VoIP Gateway) with a CPU or bus. However, it would have been obvious to provide a CPU and bus in a gateway device for the reason that the device needs a CPU for performing control functions and a bus for transferring data (such as voice on lines 18a and 18 b) within the device. With respect to the claims below, references to the prior art appear in parenthesis.

28. A VOPN device for sending data packets containing voice signals through a communication network (Goodman, VoIP 16a, 16b in Figure 1), comprising:

a CPU (Obvious to provide in a gateway with control functions);

a bus carrying voice data (Obvious to provide in a device in order to transfer data within the device); and

a voice quality module (Voice Quality Test Probe) in communication with the CPU and the bus (Obvious elements with VoIP Gateway), said module comprising a processor that provides a reference voice test signal to the bus for transmission to another VOPN device, or that processes a transmitted voice test signal received by the device through the network and a reference voice test signal to test the quality of the network (Paragraphs 0019 and 0020, wherein a processor is an inherent element in order to perform the software algorithm).

49. The device of claim 28, wherein said CPU and bus are contained in a container with connectors connected to the module (The container is the container that holds the gateway with connectors to the Voice Quality Test Probe module).

50. The device of claim 28, wherein said module includes a memory storing a reference voice test signal and/or a reference marker signal (Test probes include a memory in order to store the reference voice files, paragraph 0019).

51. The device of claim 28, wherein said memory includes a flash memory (Obvious to use commercially available flash memory for the reason that they are readily available to the skilled artisan).

52. The device of claim 28, wherein said processor includes a digital signal processor (Obvious to use commercially available processors such as a dsp since they are readily available to the skilled artisan).

53. The device of claim 28, wherein said bus includes a TDMA bus (Obvious to use a TDMA bus in the gateway for the purpose of providing a known shared bus

protocol that reduces the size of the gateway by eliminating the need for dedicated buses).

54. A voice quality module for use with a VOPN device for testing quality of a communication network through which data packets containing voice signals are sent to and from the device (Goodman, Voice Quality Test Probe 14a, 14b for use with VoIP Gateway 16a, 16b in Figure 1), said device comprising a CPU and a bus carrying voice data (Obvious elements in the VoIP gateway, see above); said module comprising:

a processor that provides a reference voice test signal to the bus for transmission to another VOPN device, or that processes a transmitted voice test signal received by the device through the network with a reference voice test signal to test the quality of the network (Paragraphs 0019 and 0020, wherein a processor is an inherent element in order to perform the software algorithm).

74. The module of claim 54, wherein said module includes a memory storing a reference voice test signal and/or a reference marker signal (Test probes include a memory in order to store the reference voice files, paragraph 0019).

75. The module of claim 54, wherein said memory includes a flash memory (Obvious to use commercially available flash memory for the reason that they are readily available to the skilled artisan).

76. The module of claim 54, wherein said processor includes a digital signal processor (Obvious to use commercially available processors such as a dsp since they are readily available to the skilled artisan).

Allowable Subject Matter

9. Claims 1-21 and 77-80 are allowed.
10. Claims 24-26, 29-48 and 55-73 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Marcelo whose telephone number is 571-272-3125. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 571-272-3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melvin Marcelo
Primary Examiner
Art Unit 2662

December 13, 2004